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असाधारण
EXTRAORDINARY

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PART II—Section 2

प्राधिकार से प्रकाशित

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bills were introduced in the Lok Sabha on the 12th June, 1998:—

BILL NO. 35 OF 1998

A Bill further to amend the Constitution of India.

BE it enacted by Parliament in the Forty-ninth Year of the Republic of India as follows :—

1. This Act may be called the Constitution (Amendment) Act, 1998.

Short title.

2. In article 311 of the Constitution,—

Amendment
of article 311.

(a) In clause (2), in the second proviso,—

(i) for sub-clause (b), the following sub-clause shall be substituted, namely:—

"(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for reasons, which are to be specified, substantiated by evidence and to be recorded by that authority in writing and also intimated to the person concerned, it is not reasonably practicable to hold such inquiry; or";

(ii) sub-clause (c) shall be omitted;

(b) clause (3) shall be omitted.

STATEMENT OF OBJECTS AND REASONS

The provisions of article 311 have been unreasonably used several times by the bureaucracy to unjustifiably punish the employees for many reasons. This provision is mostly used to punish those employees who are not in the good books of senior officers. The employees who are involved in association activities are branded as political activists and are punished under these provisions without giving them any opportunity to explain their point of view or to argue their case. The provisions of fundamental rights enshrined in the Constitution are being violated in as much as the aggrieved employees are not given a chance to defend themselves. Rules of natural justice and fair play require that the employees must have a chance to know as to why they are being punished and also they should be given a chance to explain their position and also to submit documents and evidence, if any, in their favour. Senior officers should not be vested with powers to dismiss employees without holding an inquiry. The procedure regarding holding inquiry should be dispensed with only in exceptional cases and that too after the officer who was conducting inquiry has recorded in writing that it is not practicable to hold an inquiry.

It is, therefore, proposed to amend article 311 of the Constitution suitably with a view to protecting the interests of employees.

NEW DELHI;
April 30, 1998.

BASUDEB ACHARIA.

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BILL No. 36 of 1998

A Bill further to amend the Constitution (Scheduled Tribes) Order, 1950.

BE it enacted by Parliament in the Forty-ninth Year of the Republic of India as follows :—

1. This Act may be called the Constitution (Scheduled Tribes) Order (Amendment) Act, 1998.

Short title.

2. In the Schedule to the Constitution (Scheduled Tribes) Order, 1950 in Part III—
West Bengal, after entry 38, the following entry shall be added, namely:—

Amendment
of the
Schedule.

“39. Deswalli Majhees”.

STATEMENT OF OBJECTS AND REASONS

The tribe Deswalli Majhees are Santhal descendants. The tribe was recognised as such in the year 1921. In the year 1941 Deswalli Majhees were declared as 'Tribes' and after that in the years 1952 and 1955 they were accepted as 'Santhal Descendants' and thus got benefits and legitimate dues guaranteed by the Government of India. Things changed from the year 1961 onwards. The tribes were denied all the facilities meant for them and till today they have been suffering in many ways.

Therefore, to give them justice and in view of their economic, educational and social backwardness, it is proposed in the Bill that the Deswalli Majhees tribe be included in the list of Scheduled Tribes for the State of West Bengal.

The Bill seeks to achieve the above objective.

NEW DELHI;
April 30, 1998.

BASUDEB ACHARIA.

BILL NO. 43 OF 1998

A Bill to provide for the creation of a Legislative Assembly for the Union Territory of Lakshadweep and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Forty-ninth Year of the Republic of India as follows :—

PART I

PRELIMINARY

1. (1) This Act may be called the Government of Union Territory of Lakshadweep Act, 1998.

Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint :

Provided that different dates may be appointed for different provisions of the Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Definitions.

2. In this Act, unless the context otherwise requires,—

- (a) "article" means an article of the Constitution;
- (b) "assembly constituency" means a constituency provided under this Act for the purpose of election to the Legislative Assembly;
- (c) "Election Commission" means the election commission referred to in article 324;
- (d) "Legislative Assembly" means the Legislative Assembly of the Union territory of Lakshadweep;
- (e) "Scheduled Castes/Scheduled Tribes" in relation to the Union territory means such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under article 341 and 342 of the Constitution to be Scheduled Caste or Scheduled Tribe in relation to that Union territory; and
- (f) "Union territory" means the Union territory of Lakshadweep.

PART II

LEGISLATIVE ASSEMBLY

Legislative Assembly and its composition.

(1) The total number of seats in the Legislative Assembly to be filled by persons chosen by direct election from territorial constituencies shall be forty.

(2) For the purposes of election to the Legislative Assembly, the Union territory shall be divided into single-member assembly constituencies in accordance with the provisions of Part III in such manner that the population of each of the constituencies shall, so far as practicable, be the same throughout the Union territory.

(3) Seats shall be reserved for the Scheduled Castes and Scheduled Tribes in the Legislative Assembly, and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats in the Assembly as the population of the Scheduled Castes or Scheduled Tribes in the Union territory bears to the total population of the Union territory.

Qualifications for membership of Legislative Assembly.

4. A person shall not be qualified to be chosen to fill a seat in the Legislative Assembly unless he,—

(a) is a citizen of India and makes and subscribes before some person authorised in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Schedule;

(b) is not less than twenty-five years of age; and

(c) possess such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.

Duration of Legislative Assembly.

5. The Legislative Assembly unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer and the expiration of the said period of five years shall operate as a dissolution of the Assembly :

Provided that the said period may be extended as while a proclamation of emergency issued under clause (1) of article 352 is in operation, by the President by order for a period not exceeding one year at a time and not extending it in any case beyond a period of six months after the proclamation has ceased to operate.

Session of Legislative Assembly, prorogation and dissolution.

6. (1) The Lieutenant Governor shall, from time to time, summon the Legislative Assembly to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session.

(2) The Lieutenant Governor may, from time to time,—

(a) prorogue the Assembly;

(b) dissolve the Assembly.

7. (1) The Legislative Assembly shall, as soon as may be, choose two members of the Assembly to be respectively Speaker and Deputy Speaker thereof and, so often as the office of Speaker or Deputy Speaker becomes vacant, the Assembly shall choose another member to be Speaker or Deputy Speaker, as the case may be.

Speaker and
Deputy
Speaker of
Legislative
Assembly.

(2) A member holding office as Speaker or Deputy Speaker of the Legislative Assembly—

(a) shall vacate his office if he ceases to be a member of the Assembly;

(b) may, at any time by writing under his hand addressed, if such member is the Speaker, to the Deputy Speaker, and if such member is the Deputy Speaker to the Speaker resign his office, and

(c) may be removed from his office by a resolution of the Assembly passed by a majority of all the then members of the Assembly:

Provided that no resolution for the purpose of clause (c) shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution:

Provided further that whenever the Assembly is dissolved, the Speaker shall not vacate his office until immediately before the first meeting of the Assembly after the dissolution.

(3) While the office of Speaker is vacant, the duties of the office shall be performed by the Deputy Speaker, if the office of Deputy Speaker is also vacant, by such member of the Assembly as may be determined by the rules of procedure of the Assembly.

(4) During the absence of the Speaker from any sitting of the Assembly, by the Deputy Speaker, or if he is also absent, such person as may be determined by the rules of procedure of the Assembly, or if no such person is present, such other person as may be determined by the Assembly, shall act as Speaker.

(5) There shall be paid to the Speaker and the Deputy Speaker of the Legislative Assembly such salaries and allowances as may be respectively fixed by the Legislative Assembly by law and until provision in that behalf is so made, such salaries and allowances as the Lieutenant Governor may, with the approval of the President, by order determine.

8. (1) At any sitting of the Legislative Assembly while any resolution for the removal of the Speaker from his office is under consideration, the Speaker, or while any resolution for the removal of the Deputy Speaker from his office is under consideration, the Deputy Speaker, shall not, though he is present, preside and the provisions of sub-section (4) of section 7 shall apply in relation to every such sitting as they apply in relation to a sitting from which the Speaker or, as the case may be, the Deputy Speaker is absent.

Speaker or
Deputy
Speaker not to
preside while a
resolution for
his removal
from office is
under
consideration.

(2) The Speaker shall have the right to speak in and otherwise to take part in the proceedings of the Legislative Assembly while any resolution for his removal from office is under consideration in the Assembly and shall, notwithstanding anything in section 13, be entitled to vote only in the first instance on such resolution or on any other matter during such proceedings but not in the case of an equality of votes.

9. (1) The Lieutenant Governor may address the Legislative Assembly and for that purpose require the attendance of members.

Right of
Lieutenant
Governor to
address and
send message
to Legislative
Assembly.

(2) The Lieutenant Governor may send message to the Legislative Assembly whether with respect to a Bill then pending in the Assembly or otherwise and when a message is so sent, the Assembly shall with all convenient despatch consider any matter required by the message to be taken into consideration.

Special
address by the
Lieutenant
Governor.

10. (1) At the commencement of the first session after each general election to the Legislative Assembly at the commencement of the first session of each year, the Lieutenant Governor shall address the Legislative Assembly and inform it of the causes of its summons.

(2) Provision shall be made by rules to be made by the Assembly regulating its procedure for the allotment of time for discussion of the matters referred to in such address.

Rights of
Ministers as
respects
Legislative
Assembly.

11. Every Minister who is not a member of the Legislative Assembly shall have the right to speak in and otherwise to take part in the proceedings of the Legislative Assembly and to speak in and otherwise to take part in the proceedings of any committee of the Legislative Assembly which he may be named a member, but shall not by virtue of this section be entitled to vote.

Oath or
affirmation by
member.

12. Every member of the Legislative Assembly shall, before taking his seat, make and subscribe before the Lieutenant Governor or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Schedule.

Voting in
Legislative
Assembly,
Power of
Assembly to
act notwith-
standing
vacancies and
quorum.

13. (1) Save as otherwise provided in the Act, question at any sitting of the Legislative Assembly shall be determined by a majority of votes of the members present and voting other than the Speaker or person acting as such.

(2) The Speaker or person acting as such shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes.

(3) The Legislative Assembly shall have power to act notwithstanding any vacancy in the membership thereof, and any proceedings in the Legislative Assembly shall be valid notwithstanding that it is discovered subsequently that some person who was not entitled so to do, sat or voted or otherwise took part in the proceedings.

(4) The quorum to constitute a meeting of the Assembly shall be one-third of the total number of members of the Assembly.

(5) If at any time during a meeting of the Legislative Assembly there is no quorum, it shall be the duty of the Speaker, or person acting as such, either to adjourn the Assembly or to suspend the meeting until there is a quorum.

Vacation of
seats.

14. (1) No person shall be a member both of Parliament and of the Legislative Assembly and if a person is chosen a member both of Parliament and of such Assembly, then at the expiration of such period as is specified in or under the Representation of the People Act, 1951, and the rules made by the President under clause (2) of article 190, that person's seat in Parliament shall become vacant, unless he had previously resigned his seat in the Legislative Assembly.

(2) If a member of the Legislative Assembly—

(a) becomes subject to any disqualification mentioned in section 15 or section 16 for membership of the Assembly; or

(b) resigns his seat by writing under his hand addressed to the Speaker and his resignation is accepted by the Speaker,

his seat shall thereupon become vacant:

Provided that in the case of any resignation referred to in clause (b), if from the information received or otherwise and after making such inquiry as he thinks fit, the Speaker is satisfied that such resignation is not voluntary or genuine he shall not accept such resignation.

(3) If for a period of sixty days a member of the Legislative Assembly is without permission of the Assembly absent from all meetings thereof, the Assembly may declare his seat vacant:

Provided that in computing the said period of sixty days no account shall be taken of any period during which the Assembly is prorogued or is adjourned for more than four consecutive days.

15. (1) A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly—

Disqualifica-
tion for
membership.

(a) if he holds any office of profit under the Government of India or the Government of any State or the Government of any Union territory other than an office declared by law made by Parliament or by the Legislature of any State or by the Legislative Assembly of any other Union territory not to disqualify its holder; or

(b) if he is for the time being chosen as, and for being, a member of either House of Parliament under the provisions of sub-clause (b) or sub-clause (c) of sub-clause (1) of article 102 or of any law made in pursuance of that article.

(2) For the purpose of the section, a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State or the Government of any Union territory by reason only that he is a Minister either for the Union or for such State or Union territory.

(3) If any question arises as to whether a member of the Legislative Assembly has become disqualified for being such a member under the provisions of sub-section (1), the question shall be referred for the decision of the President and his decision shall be final.

(4) Before giving any decision on any such question, the President shall obtain the opinion of the Election Commission and shall act according to such opinion.

16. The provisions of the Tenth Schedule to the Constitution shall, subject to the necessary modification (including modifications, for construing references therein to the Legislative Assembly of a State, article 188, article 194 and article 212 as references, respectively, to the Legislative Assembly, section 12, section 18 and section 37 of this Act), apply to and in relation to the members of the Legislative Assembly of a State and accordingly:—

Disqualifica-
tion on ground
of defection.

(a) the said Tenth Schedule as so modified shall be deemed to form part of this Act; and

(b) a person shall be disqualified for being a member of the Legislative Assembly if he is so disqualified under the said Tenth Schedule as so modified.

17. If a person sits or votes as a member of the Legislative Assembly before he has complied with requirements of section 12 or when he knows that he is not qualified or that he is disqualified for membership thereof, he shall be liable in respect of each day on which he so sits or votes to a penalty of five hundred rupees to be recovered as a debt due to the Union.

Penalty for sit-
ting and voting
before making
oath or affirma-
tion or when not
qualified or
when disquali-
fied.

18. (1) Subject to the provisions of this Act and to the rules and standing orders regulating the procedure of the Legislative Assembly, there shall be freedom of speech in the Legislative Assembly.

Powers,
Privileges, etc.,
of members.

(2) No member of the Legislative Assembly shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislative Assembly or any committee thereof and no person shall be so liable in respect of the publication by or under the authority of such Assembly of any report, paper, votes or proceedings.

(3) In other respects, the powers, privileges and immunities of the Legislative Assembly and of the members and the committees thereof shall be such as are for the time being enjoyed by the House of the People and its members and committees.

(4) The provisions of sub-sections (1), (2) and (3) shall apply in relation to persons who by virtue of this Act have the right to speak in, and otherwise to take part in the proceedings, of the Legislative Assembly or any committee thereof as they apply, in relation to members of that Assembly.

Salaries and allowances of members.

19. Members of the Legislative Assembly shall be entitled to receive such salaries and allowances as may from time to time determine by the Legislative Assembly by law and until provision in that behalf is so made, such salaries and allowances as the Lieutenant Governor may, with the approval of the President, by order determine.

Exemption of property of the Union from taxation.

20. The property of the Union shall, save in so far as Parliament may by law otherwise provide, be exempted from all taxes imposed by or under any law made by the Legislative Assembly or by under any other law in force in the Union territory:

Provided that nothing in this section shall, until Parliament by law otherwise provides, prevent any authority within the Union territory from levying any tax on any property of the Union to which such property was immediately before the commencement of the Constitution liable or treated as liable, so long as the tax continues to be levied in the Union territory.

Restrictions on laws passed by Legislative Assembly with respect to certain matters.

21. (1) The provisions of articles 286, 287 and 288 shall apply in relation to any law passed by the Legislative Assembly with respect to any of the matters referred to in those articles as they apply in relation to any law passed by the Legislature of a State with respect to those matters.

(2) The provisions of article 304 shall, with the necessary modifications, apply in relation to any law passed by the Legislative Assembly with respect to any of the matters referred to in that article as they apply in relation to any law passed by the legislature of a State with respect to those matters.

Special provisions as to Financial Bills.

22. (1) A Bill or amendment shall not be introduced into, or moved in, the legislative Assembly except on the recommendation of the Lieutenant Governor if such bill or amendment makes provision for any of the following matters, namely:—

(a) the imposition, abolition, remission, alteration or regulation of any tax;

(b) the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the Government of the Union territory;

(c) the appropriation of moneys out of the Consolidated Fund of the Union territory;

(d) the declaring of any expenditure to the expenditure charged on the Consolidated Fund of the Union territory or the increasing of the amount of any such expenditure;

(e) the receipt of money on account of the Consolidated Fund of the Union territory or the custody of such money;

Provided that no recommendation shall be required under this sub-section for the moving of an amendment making provision for the reduction or abolition of any tax.

(2) A Bill or amendment shall not be deemed to make provision for any of the matters aforesaid by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for license or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

(3) A Bill which, if enacted and brought into operation, would involve expenditure from the Consolidated Fund of the Union territory shall not be passed by the Legislative Assembly unless the Lieutenant Governor has recommended to that Assembly the consideration of the Bill.

Procedure as to lapsing of Bills.

23. (1) A Bill pending in the Legislative Assembly shall not lapse by reason of the prorogation of the Assembly.

(2) A Bill which is pending in the Legislative Assembly shall lapse on a dissolution of the Assembly.

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24. When a Bill has been passed by the Legislative Assembly it shall be presented to the Lieutenant Governor and he shall declare either that he assents to the Bill or that he withholds assents therefrom or that he reserves the Bill for the consideration of the President:

Assent to Bills.

Provided that the Lieutenant Governor may, as soon as possible after the presentation of the Bill for his assent, return the Bill if it is not a Money Bill together with a message requesting that the Assembly will reconsider the Bill or any specified provisions thereof, and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message and, when a Bill is so returned, the Assembly will reconsider the Bill accordingly, and if the Bill is passed again with or without amendment and presented to the Lieutenant Governor for assent, he shall declare either that he assents, to the Bill or that he reserves the Bill for the consideration of the President:

Provided further that the Lieutenant Governor shall not assent to, but shall reserve for the consideration of the President, any Bill which,—

(a) in the opinion of the Lieutenant Governor would, if it became law, so derogate from the powers of the High Court as to endanger the position which that Court is, by the Constitution, designed to fill; or

(b) the President may, by order, direct to be reserved for his consideration; or

(c) relates to matter referred to in sub-section (5) of section 7 or section 19 or section 34 or sub-section (3) of section 43.

Explanation.—For the purposes of this section and section 25, a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with all or any of the matters specified in sub-section (1) of section 22 or any matter incidental to any of those matters and, in either case, there is endorsed thereon the certificate of the Speaker of the Legislative Assembly signed by him that it is a Money Bill.

25. When a Bill is reserved by the Lieutenant Governor for the consideration of the President, the President shall declare either that he assents to the Bill or that he withholds assent therefrom:

Bills reserved for consideration.

Provided that where the Bill is not a money Bill, the President may direct the Lieutenant Governor to return the Bill to the Legislative Assembly together with such a message as is mentioned in the first proviso to section 24 and, when a Bill is so returned, the Assembly shall reconsider it accordingly within a period of six months from the date of receipt of such message and, if it is again passed by the Assembly with or without amendment it shall be presented again to the President for his consideration.

26. No Act of the Legislative Assembly, and no provision in any such Act, shall be invalid by reason only that some previous sanction or recommendation required by this Act was not given, if assent to that Act was given by the Lieutenant Governor or, one being reserved by the Lieutenant Governor for the consideration of the President, by the President.

Requirements as to sanction etc.

27. (1) The Lieutenant Governor shall in respect of every financial year cause to be laid before the Legislative Assembly, with the previous sanction of the President, a statement of the estimated receipts and expenditure of the Union territory for the year, in this part referred to as the "annual financial statement".

Annual financial statement.

(2) The estimates of expenditure embodied in the annual financial statement shall show, separately—

(a) the sums required to meet expenditure described by this Act as expenditure charged upon the Consolidated Fund of the Union territory; and

(b) the sums required to meet other expenditure proposed to be made from the Consolidated Fund of the Union territory and shall distinguish expenditure on revenue account from other expenditure.

(3) Notwithstanding anything contained in any law for the time being in force, the following expenditure shall be expenditure charged on the Consolidated Fund of the Union territory:—

(a) the emoluments and allowances of the Lieutenant Governor and other expenditure relating to his office as determined by the President by general or special order;

(b) the charges payable in respect of loans advanced to the Union territory from the Consolidated Fund of India including interest, sinking fund charges and redemption charges and other expenditure connected therewith;

(c) the salaries and allowances of the Speaker and the Deputy Speaker of the Legislative Assembly;

(d) any sums required to satisfy any judgement, decree or award of any court or arbitrator or tribunal;

(e) any other expenditure declared by the Constitution or by law made by Parliament or by the Legislative Assembly to be so charged.

Procedure in
Legislative
Assembly with
respect to
estimates.

28. (1) So much of the estimates as relates to expenditure charged upon the Consolidated Fund of the Union territory shall not be submitted to the vote of the Legislative Assembly but nothing in this sub-section shall be construed as preventing the discussion in the Legislative Assembly of any of those estimates.

(2) So much of the said estimates as relates to other expenditure shall be submitted in the form of demands for grants to the Legislative Assembly, and the Legislative Assembly shall have the power to assent or to refuse to assent, to any demand, or to assent to any demand subject to a reduction of the amount specified therein.

(3) No demand for a grant shall be made except on the recommendation of the Lieutenant Governor.

Appropriation
Bills.

29. (1) As soon as may be after the grants under section 28 have been made by the Legislative Assembly, there shall be introduced a Bill to provide for the appropriation out of the Consolidated Fund of the Union territory of all moneys required to meet—

(a) the grants so made by the Assembly; and

(b) the expenditure charged on the Consolidated Fund of the Union territory but not exceeding in any case the amount shown in the statement previously laid before the Assembly.

(2) No amendment shall be proposed to any such Bill in the Legislative Assembly which will have the effect of varying the amount or altering the destination of any grant made or of varying the amount of any expenditure charged on the Consolidated Fund of the Union territory and the decision of the person presiding as to whether an amendment is inadmissible under this sub-section shall be final.

(3) Subject to the other provisions of this Act, no money shall be withdrawn from the Consolidated Fund of the Union territory except under appropriation made by law passed in accordance with provisions of this section.

Supplemen-
tary, additional
or excess
grants.

30. (1) The Lieutenant Governor shall,—

(a) if the amount authorised by any law made in accordance with provisions of section 29 to be expended for a particular service for the current financial year is found to be insufficient for the purposes of that year or when a need has arisen during the current financial year for supplementary or additional expenditure upon some new service not contemplated in the annual financial statement for that year, or

(b) if any money has been spent on any service during a financial year in excess of the amount granted for that service and for that year, cause to be laid before the Legislative Assembly, with the previous sanction of the President, another Statement showing the estimated amount of that expenditure or cause to be presented to the Legislative Assembly with such previous sanction a demand for such excess, as the case may be.

(2) The provisions of sections 27, 28 and 29 shall have effect in relation to any such statement and expenditure or demand and also to any law to be made authorising the appropriation of money out of the Consolidated Fund of the Union territory to meet such expenditure or the grant in respect of such demand as they have effect in relation to the annual financial statement and the expenditure mentioned therein or to a demand for a grant and the law to be made for the authorisation of appropriation of moneys out of the Consolidated Fund of the Union territory to meet such expenditure or grant.

31. (1) Notwithstanding anything in the foregoing provisions of this Part, the Legislative Assembly shall have power to make any grant in advance in respect of the estimated expenditure for a part of any financial year pending the completion of the procedure prescribed in section 28 for the voting of such grant and passing of the law in accordance with the provisions of section 29 in relation to that expenditure and the Legislative Assembly shall have power to authorise by law the withdrawal of moneys from the Consolidated Fund of the Union territory for the purposes for which the said grant is made.

Votes on account.

(2) The provisions of sections 28 and 29 shall have effect in relation to the making of any grant under sub-section (1) or to any law to be made under that sub-section as they have effect in relation to the making of a grant with regard to any expenditure mentioned in the annual financial statement and the law to be made for the authorisation of appropriation of moneys, out of the Consolidated Fund of the Union territory to meet such expenditure.

32. Notwithstanding anything in the foregoing provisions of this Part, the Lieutenant Governor may authorise such expenditure from the Consolidated Fund of the Union territory as he deems necessary for a period of not more than six months beginning from the date of the constitution of the Consolidated Fund of the Union territory, pending the sanction of such expenditure by the Legislative Assembly.

Authorisation of expenditure pending its sanction by Legislative Assembly.

33. (1) The Legislative Assembly make rules regulating, subject to the provisions of this Act, its procedure and the conduct of its business:

Rules of Procedure.

Provided that the Lieutenant Governor shall, after consultation with the Speaker of the Legislative Assembly and with the approval of the President, make rules—

(a) for securing the timely completion of financial business;

(b) for regulating the procedure of, and the conduct of business, in the Legislative Assembly in relation to any financial matter or to any Bill for the appropriation of moneys out of the Consolidated Fund of the Union territory;

(c) for prohibiting the discussion of, or the asking of questions on, any matters which affects the discharge of the functions of the Lieutenant Governor in so far as he is required by or under this Act or any law to act in his discretion.

(2) Until rules are made under sub-section (1), the rules of procedure and standing orders with respect to the Legislative Assembly of the State of Uttar Pradesh in force immediately before the commencement of this Act shall have effect in relation to the Legislative Assembly subject to such modifications and adaptations as may be made therein by the Lieutenant Governor.

34. (1) The Legislative Assembly may by law adopt any one or more of the languages in use in the Union territory or Hindi as the official language or languages to be used for all or any of the official purposes of the Union territory:

Official language or languages of the Union Territory and language or languages to be used in Legislative Assembly.

Provided that the President may by order direct—

(i) that the official language of the Union shall be adopted for such of the official purposes of the Union territory as may be specified in the order.

(ii) that any other language shall also be adopted throughout the Union territory or such part thereof for such of the official purposes of the Union territory as may be specified in the order, if the President is satisfied that a substantial proportion of the population of the Union territory desires the use of that other language for all or any of such purposes.

(2) The business in the Legislative Assembly shall be transacted in the official language or languages of the Union territory or in Hindi or in English:

Provided that the Speaker of the Legislative Assembly or the person acting as such, as the case may be, may permit any member who cannot adequately express himself in any of the languages aforesaid, to address the Assembly in his mother-tongue.

Languages to be used for Bills, Acts, etc.

35. Notwithstanding anything contained in section 34, until Parliament by law otherwise provides, the authoritative texts—

(a) of all Bill to be introduced or amendments thereto to be moved in the Legislative Assembly;

(b) of all Acts passed by the Legislative Assembly; and

(c) of all orders, rules, regulations and bye-laws issued under any law made by the Legislative Assembly shall be in English language:

Provided that where the Legislative Assembly has prescribed any language other than the English language for use in Bills introduced in, or Acts passed by, the Legislative Assembly or in any order, rule, regulation or bye-law issued under any law made by the Legislative Assembly, a translation of the same in the English language published under the authority of the Lieutenant Governor in the official Gazette shall be deemed to be the authoritative text thereof in the English language.

Restrictions on discussion in the Legislative Assembly.

36. No discussion shall take place in the Legislative Assembly with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties.

Courts not to inquire into proceedings of Legislative Assembly.

37. (1) The validity of any proceedings in the Legislative Assembly shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No officer or member of the Legislative Assembly in whom powers are vested by or under this Act for regulating procedure or the conduct of business, or for maintaining order in the Legislative Assembly shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

PART III

DELIMITATION OF CONSTITUENCIES

Election Commission to delimit constituencies.

38. (1) The Election Commission shall, in the manner herein provided, distribute the seats assigned to the Legislative Assembly under section 3 to single-member territorial constituencies and delimit them having regard to the following provisions, namely:—

(a) all constituencies shall, as far as practicable, be delimited in such manner that the ratio between the population of each of such constituencies and the total population of the Union territory is the same; and

(b) constituencies in which seats are reserved for the Scheduled Castes or Scheduled Tribes shall, as far as possible, be located in areas where the proportion of the population to the total population is comparatively large.

(2) The Election Commission shall—

(a) publish its proposals for the delimitation of constituencies in the official Gazette and also in such other manner as the Commission may consider fit together

with a notice inviting objections and suggestions in relation to the proposals and specifying a date on or after which their proposals will be further considered by it;

(b) consider all objections and suggestions which may have been received by it before the date so specified;

(c) after considering all objections and suggestions which may have been received by it before the date so specified, finalise delimitation of constituencies and cause such order or orders to be published in the official Gazette; and upon such publication, the order or orders shall have the full force of law and shall not be called in question in any court.

39. The Election Commission may, from time to time, by notification in the official Gazette,—

(a) correct any printing mistakes in any order made under section 38 or any error arising therein from inadvertent slip or omission; and

(b) where the boundaries or name of any territorial division mentioned in any such order are or is altered, make such amendments as appear to it to be necessary or expedient for bringing such order up to date.

40. (1) For the purpose of constituting the Legislative Assembly, a general election will be held as soon as may be after the delimitation of all the assembly constituencies under section 38.

(2) For the purposes of sub-section (1), the Lieutenant Governor shall, by one or more notifications published in the Official Gazette, call upon all the said assembly constituencies to elect members in accordance with the provisions of the Representation of the People Act, 1951 and of the rules and orders made or issued thereunder as applicable under sub-section (3).

(3) The Representation of People Act, 1950, the Representation of the People Act, 1951 the rules and orders made or issued under the said Acts and all other laws for the time being in force relating to the elections shall apply with necessary modifications (including modifications for construing references therein to a State, State Government and Governor as including references to the Union territory, Government of the Union territory and Lieutenant Governor, respectively) to, and in relation to, the general election referred to in sub-section (1)

Power of Election Commission to maintain delimitation orders up to date.

Election to the Legislative Assembly.

43 of 1951.

43 of 1950.

43 of 1951.

PART IV

CERTAIN PROVISIONS RELATING TO LIEUTENANT GOVERNOR AND MINISTERS

41. (1) The Lieutenant Governor shall act in his discretion in a matter—

(i) which falls outside the purview of the powers conferred on the Legislative Assembly but in respect of which powers or functions are entrusted or delegated to him by the President, or

(ii) in which he is required by or under any law to act in his discretion or to exercise any judicial or quasi-judicial functions.

(2) If any question arises as to whether any matter is or is not matter as respects which the Lieutenant Governor is by or under any law required to act in his discretion, the decision of the Lieutenant Governor thereon shall be final.

(3) If any question arises as to whether any matter is or is not a matter as respects which the Lieutenant Governor is required by any law to exercise any judicial or quasi-judicial functions, the decision of the Lieutenant Governor thereon shall be final.

42. The question whether any, and if so what, advice was tendered by Ministers to the Lieutenant Governor shall not be inquired into in any court.

Matters in which Lieutenant Governor to act in his discretion.

Advice by Ministers.

Other provisions as to Ministers.

43. (1) Before a Minister enters upon his office, the Lieutenant Governor shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the Schedule.

(2) A Minister who, for any period of six months, is not a member of the Legislative Assembly, at the expiration of the period, shall cease to be a Minister.

(3) The salaries and allowances of Ministers shall be such as the Legislative Assembly may from time to time by law determine and until the Legislative Assembly so determines, shall be determined by the Lieutenant Governor with the approval of the President.

Conduct of business.

44. (1) The President shall make rules—

(a) for the allocation of business to the Ministers in so far as it is business with respect to which the Lieutenant Governor is required to act on the aid and advice of his Council of Ministers; and

(b) for the more convenient transaction of business with the Ministers, including the procedure to be adopted in the case of a difference of opinion between the Lieutenant Governor and the Council of Ministers or a Minister.

(2) Save as otherwise provided in this Act, all executive actions of the Lieutenant Governor whether taken on the advice of his Ministers or otherwise shall be expressed to be taken in the name of the Lieutenant Governor.

(3) Orders and other instruments made and executed in the name of the Lieutenant Governor shall be authenticated in such manner as may be specified in rules to be made by the Lieutenant Governor and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Lieutenant Governor.

Duties of Chief Minister as respects the furnishing of information, etc. to the Lieutenant Governor.

45. It shall be the duty of the Chief Minister—

(a) to communicate to the Lieutenant Governor all decisions of Council of Ministers relating to the administration of the affairs of the Union territory and proposals for legislation;

(b) to furnish such information relating to the administration of the affairs of the Union territory and proposals for legislation as Lieutenant Governor may call for; and

(c) if the Lieutenant Governor so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council.

PART V

MISCELLANEOUS AND TRANSITIONAL PROVISIONS

Consolidated Fund of the Union territory.

46. (1) As from such date as the Central Government may, by notification in the official Gazette, appoint in this behalf, all revenues received in the Union territory by the Government of India or the Lieutenant Governor in relation to any matter with respect to which the Legislative Assembly has power to make laws, and all grants made and all loans advanced to the Union territory from the Consolidated Fund of India and all moneys received by the Union territory in repayment of loans shall form one Consolidated Fund to be entitled "the Consolidated Fund of the Union territory of Lakshadweep" (referred to in this Act as the Consolidated Fund of the Union territory).

(2) No moneys out of the Consolidated Fund of the Union territory shall be appropriated except in accordance with and for the purposes and in the manner provided in the Act.

(3) The custody of the Consolidated Fund of the Union territory, the payment of moneys into such fund, the withdrawal of moneys therefrom and all other matters connected with or ancillary to those matters shall be regulated by rules made by the Lieutenant Governor with the approval of the President.

47. (1) There shall be established a Contingency Fund in the nature of an imprest to be entitled "the Contingency Fund of the Union territory of Lakshadweep" into which shall be paid from and out of the Consolidated Fund of the Union territory such sums as may, from time to time be determined by law made by the Legislative Assembly; and the said Fund shall be held by the Lieutenant Governor to enable advances to be made by him out of such Fund.

Contingency Fund of the Union territory.

(2) No advances shall be made out of the Contingency Fund referred to in sub-section (1) except for the purposes of meeting unforeseen expenditure pending authorisation of such expenditure by the Legislative Assembly under appropriation made by law.

(3) The Lieutenant Governor may make rules regulating all matters connected with or ancillary to the custody of, the payment of moneys in to, and the withdrawal of moneys from the aforesaid Contingency Fund.

48. The reports of the Comptroller and Auditor General of India relating to the accounts of the Union territory for any period subsequent to the date referred to in sub-section (1) of section 46 shall be submitted to the Lieutenant Governor who shall cause them to be laid before the Legislative Assembly.

Audit Reports.

49. Notwithstanding anything in this Act, the Lieutenant Governor and his Council of Ministers shall be under the general control of, and comply with such particular directions, if any, as may from time to time be given by, the President.

Relation of Lieutenant Governor and his Ministers to President.

50. (1) Every order made by the President under article 239AB shall expire at the end of one year from the date of issue of the order and the provisions of clauses (2) and (3) of article 356 shall, so far may be, apply to such order as they apply to a proclamation issued under clause (1) of article 356.

Period of order made under article 239AB and approval thereof by Parliament.

(2) Notwithstanding anything contained in sub-section (1), the President may extend the duration of the aforesaid order for a further period not exceeding two years from the date of expiry of the order under sub-section (1) subject to the condition that every extension of the said order for any period beyond the expiration of one year shall be approved by resolutions of both Houses of Parliament.

51. Where the Legislative Assembly is dissolved or its functioning as such Assembly remains suspended on account of an order made by the President under article 239AB, it shall be competent for the President to authorise when the House of the People is not in session expenditure from the Consolidated Fund of the Union territory pending the sanction of such expenditure by Parliament.

Authorisation of expenditure by President.

52. For the removal of doubts it is hereby declared that—

(a) all contracts in connection with the administration of the Union territory are contracts made in the exercise of the executive power of the Union; and

(b) all suits and proceedings in connection with the administration of the Union territory shall be instituted by or against the Government of India.

Contracts and suits.

53. (1) If any difficulty arises in relation to the transaction from the provisions of any law repealed by the Act or in giving effect to the provisions of this Act and in particular in relation to the constitution of the Legislative Assembly, the President may by order to anything not inconsistent with the provisions of the Constitution or of this Act which appear to him to be necessary or expedient for the purpose of removing the difficulty:

Power of President to remove difficulties.

Provided that no order under the sub-section shall be made after the expiry of three years from the date of constitution of the first Legislative Assembly.

(2) Every order made under sub-section (1) shall be laid before each House of Parliament.

Laying of rules
before Legislative
Assembly.

54. Every rule made by the Lieutenant Governor under this Act shall be laid, as soon as it is made, before the Legislative Assembly.

Amendments
to the
Constitution.

55. On and from the appointed day—

(a) after article 239AA, the following article shall be inserted, namely:—

Special
provision with
respect to
Lakshadweep.

"239AAA. (1) As from the date of commencement of the Government of Union territory of Lakshadweep Act, 1998 the administrator of the Union territory of Lakshadweep appointed under article 239 shall be designated as the Lieutenant Governor.

(2) The provisions of articles 239AA and 239AB shall, so far as may be apply *mutatis mutandis* in relation to the Union territory of Lakshadweep, Lieutenant Governor and the Legislative Assembly, as they apply in relation to the National Capital Territory of Delhi and its Legislature, respectively."

(b) in article 240, in clause (1), for the existing proviso, the following provisos shall be substituted, namely:—

"provided that when any body is created under article 239A or 239AAA to function as a Legislature for the Union territory of Pondicherry or Union territory of Lakshadweep, as the case may be, the President shall not make any regulation for the peace, progress and good government of that Union territory with effect from the date appointed for the first meeting of the Legislature:

Provided further that whenever the body functioning as a Legislature for the Union territory of Pondicherry or Lakshadweep, as the case may be, is dissolved, or the functioning of that body as such legislature remains suspended on account of any action taken under any such law as is referred to in clause (1) of article 239A or 239AB, as the case may be, the President may, during the period of such dissolution or suspension, make regulations for the peace, progress and good government of that Union territory.

(c) In the Fourth Schedule to the Constitution, in the Table,

(a) entries 26 and 27 shall be re-numbered as entries 27 and 28 respectively, and before entry 27 as so re-numbered, the following entry shall be inserted, namely:—

"26. Lakshadweep.....1";

(b) for the figures "233", the figures "234" shall be substituted.

Amendment of
section 27A of
Act 43 of
1950.

56. In section 27A of the Representation of People Act, 1950, after sub-section (4), the following sub-section shall be inserted, namely:—

"(5) The electoral college for the Union territory of Lakshadweep shall consist of the elected members of the Legislative Assembly constituted for that territory under the Government of Union territory of Lakshadweep Act, 1998."

THE SCHEDULE

(See Sections 4, 12 and 43)

FORMS OF OATH OR AFFIRMATIONS

I

Form of oath or affirmation to made by a candidate for election to the Legislative Assembly:—

"I, AB, having been nominated as a candidate to fill a seat in the Legislative Assembly, do swear in the name of God/solemnly affirm that I bear true faith and

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allegiance to the Constitution of India as by law established and that I will uphold the sovereignty and integrity of India."

II

Form of oath or affirmation to be made by a member of the Legislative Assembly:—

"I, AB, having been elected a member of the Legislative Assembly, do swear in the name of God/solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established, and that I will faithfully discharge the duty upon which I am about to enter."

III

Form of oath of office of a member of the Council of Ministers:—

"I, AB, do swear in the name of God/solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by established, that I will uphold the sovereignty and integrity of India, that I will faithfully and conscientiously discharge my duties as a Minister, and that I will do right to all manner of people in accordance with the Constitution and the law without fear or favour, affection or ill-will."

IV

Form of oath of Secrecy for a member of Council of Ministers:—

I, AB, do swear in the name of God/solemnly affirm that I will not directly or indirectly communicate or reveal to any person or persons any matter which shall be brought under my consideration or shall become known to me as a Minister except as may be required for the due discharge of any duties as such Minister."

STATEMENT OF OBJECTS AND REASONS

Even after 50 years of Independence, the Union territory of Lakshadweep has not been provided with a democratic set-up with a Legislative Assembly for the governance of the affairs of the Union territory Administration. All powers are vested in the Lieutenant Governor and the bureaucracy continues to reign supreme. In the absence of Legislative Assembly with devolution of powers, the people of the islands are not enable to have a sense of belonging and involvement in the developmental activities of the islands and do not have a say in the utilisation of the funds provided by the Central Government in proper perspective.

The type of administration provided to the Union territory is not at all befitting to a democratic set-up and devolution of powers. The population of the Union territory has crossed four lakhs mark and the literacy percentage is well over the national average and is steadily heading towards achieving cent percent, literacy as per norms prescribed by the Government of India.

However, despite of all these favourable points the people of the Union territory did not get administrative set-up of their own choice mainly due to unforesighted views of the Central Government. They deserve a political set-up in the same line as Delhi, Pondicherry and the like are having.

There have been series of demands from the people of the Union territory for providing a Legislative Assembly on the line of the set-up in Delhi and Pondicherry. The people of the island territory are unanimous in this regard. Now, since a three-tier Panchayati Raj system is also in offing in pursuance with the Constitution (Seventy-third Amendment) Act, with the idea of devolution of powers at Panchayat, block and district levels, it is high time that a Legislative Assembly was provided to set the tone and direction for the governance of the Union territory Administration on democratic norms.

The Bill seeks to achieve the aforesaid objectives.

NEW DELHI;
April 30, 1998.

BASUDEB ACHARIA

FINANCIAL MEMORANDUM

Clause 3 of the Bill provides for setting up of a Legislative Assembly for the Union territory of Lakshadweep, Clauses 7(5), 19 and 43(3) relate to payment of salaries and allowances to the Speaker, the Deputy Speaker, Members of the Legislative Assembly and the Ministers. The expenditure on such salaries and allowances and other expenditure of incidental nature such as on the additional staff in the Legislative Assembly and Council of Ministers will be met from the Consolidated Fund of the Union territory of Lakshadweep.

Clause 38 provides for the delimitation of thirty single member territorial constituencies for the proposed Assembly of the Union territory of Lakshadweep. Clause 55 provides that Union territory of Lakshadweep will be represented by one member in the Council of States. For this purpose, a non-recurring expenditure of about rupees fifteen lakhs is likely to be incurred. This expenditure will be met from the Consolidated Fund of India.

The Bill does not involve any other expenditure whether of a recurring or non-recurring nature.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 33 of the Bill empowers the Legislative Assembly of the Union territory of Lakshadweep to make rules, subject to the provisions of this Bill, for regulating its procedure and conduct of its business. It also provides that the Lieutenant Governor shall, after consultation with the Speaker of the Legislative Assembly and with the approval of the President make rules for securing the completion of the financial business, regulating the procedure and conduct of business in the Legislative Assembly in relation to any financial matter or to any Bill for appropriation of moneys out of the Consolidated Fund of the Union territory of Lakshadweep and for prohibiting the discussion of or asking any question which affect the discharge of the functions of the Lieutenant Governor in so far as he is required to act in his discretion.

Clause 44 empowers the President to make rules regarding allocation of business to Ministers and transactions of such business. It further empowers the Lieutenant Governor to make rules providing the manner of authenticating the orders issued in his name.

Clause 46(3) and 47(3) provide that the Lieutenant Governor may make rules regarding the custody, etc. of the Consolidated Fund of the Union territory of Lakshadweep and the Contingency Fund of the Union territory of Lakshadweep.

Clause 53 empowers the President to issue orders for removing any difficulty in giving effect to the provisions of this Bill and in particular in relation to the constitution of the Legislative Assembly.

The matters mentioned above are of a procedural nature and it is difficult to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

BILL No. 42 OF 1998

A Bill to amend the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

Be it enacted by Parliament in the Forty-ninth Year of the Republic of India as follows:—

1. This Act may be called the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Amendment Act, 1998. Short title.

2. In section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995,— Amendment of section 33.

1 of 1996.

(i) for the words "in the posts identified for each disability:", the words "in all posts in all groups of services identified for each disability;" shall be substituted;

(ii) the existing section shall be renumbered as sub-section (1) thereof and after sub-section (1) as so renumbered, the following sub-section and explanation shall be inserted, namely,—

“(2) Notwithstanding any judgement, decree or order of any court or tribunal or any other authority to the contrary, the provisions of sub-section (1) shall be deemed to have come into force from the date of coming into force of the Act.

*Explanation:—*For the purposes of this section, the expression "appoint" includes appointment by promotion also.”

STATEMENT OF OBJECTS AND REASONS

Parliament enacted the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 with a view to provide statutory rights to the physically handicapped persons in various spheres of life, including employment. The said Act is of far reaching consequences and has turned out to be a healing gesture to the members of the society, who on account of their physical deficiencies, are not able to compete with their fellow countrymen.

The Act enjoins reservation of not less than three per cent for physically handicapped persons in every establishment under Government.

At present reservation in promotion in favour of physically handicapped person is available only in some groups of services.

With a view to put things beyond controversy and to remove existing anomaly and also to make the benefits of reservation available invariably in all groups of services, even where the appointments are being made only from promotional avenues, it would be expedient to modify the said Act suitably.

It is further proposed to implement the provisions of reservation from the date of coming into force of the Act in order to do justice to the handicapped. The Bill would go a long way and would ensure a fair and just treatment to those members of the society, who need it the most.

NEW DELHI;
May 5, 1998.

BHAGWAN SHANKAR RAWAT

BILL NO. 50 OF 1998

A Bill further to amend the States Reorganisation Act, 1956.

BE it enacted by Parliament in the Forty-ninth Year of the Republic of India as follows:—

1. This Act may be called the States Reorganisation (Amendment) Act, 1998.

Short title.

37 of 1956.

2. In section 51 of the States Reorganisation Act, 1956:—

Amendment
of section 51.

(i) after sub-section (2), the following sub-section shall be inserted, namely:—

"(2A) The President may, after the expiry of every four years, review the matter of establishment of a permanent bench or benches of the High Court of a new State with reference to demand made in regard thereto:

Provided that where the Chief Justice of that High Court, after being formally requested to, does not express his opinion in writing within six months from the date of such request, it shall be deemed that the Chief Justice has no opinion to give on the subject:

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Provided also that the President shall not be bound by the opinion given under sub-section (2) by the Governor of a new State or the Chief Justice of the High Court of that State:

Provided also that the President, if he deems fit, may appoint a three-member Commission, chaired by a sitting or retired Judge of the Supreme Court, to examine the matter of desirability and feasibility of and site for the establishment of a new permanent bench or benches of the High Court for the new State and to give its opinion in regard thereto after ascertaining the views of the Governor and the Chief Justice of the High Court of that State, and if the President does so, there shall be no further requirement for the President to consult the Governor or the Chief Justice of the High Court of that State:"; and

(ii) after sub-section (3), the following provisos shall be added, namely:—

"Provided that the desirability of sitting of the judges and division courts of the High Court for a new State at such other new place or places in that State shall be reviewed periodically after every four years by the Chief Justice of that High Court:

Provided further that the Chief Justice may order that any case or class of cases arising before the judges at such place or places be heard and disposed of at the principal seat of that High Court:

Provided also that the cases, involving interpretation of the provisions of the Constitution or the *vires* of statute or a part thereof or a rule or regulation made under the statute, which have not already been settled by the Supreme Court or the High Court, shall not be heard in such sittings and shall be heard at the principal seat of that High Court."

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STATEMENT OF OBJECTS AND REASONS

In a democratic set-up, it is the basic duty of the State to bring justice to the door steps of the people.

It cannot be gainsaid that distance of the principal seat of a High Court from the place of residence of the litigants makes it extremely difficult, nay impossible, to avail the remedies provided by the Constitution for enforcement of fundamental and other rights. It has always been the declared policy of the Government of India to provide justice at the door-steps of litigants.

To establish a permanent Bench or Benches of the High Court is the Constitutional prerogative of the Union Parliament *vide* entry 78 of the Union List of the Seventh Schedule to the Constitution. The statute law enacted by the Parliament in that regard is the State Reorganisation Act, 1956 (Act No. 37 of 1956).

Section 51(2) of the said Act provides for consultation by the President with two other constitutional functionaries, namely, the Governor of the State and the Chief Justice of the High Court of that State, depicting involvement of three functionaries.

It has been experienced that there often results an impasse due to absence of unanimity of opinion of the three Constitutional functionaries, which culminates into denial of the Constitutional obligation to bring justice to the door-steps of the people, as enshrined in article 39A of the Constitution. The report of the Jaswant Singh Commission, prepared at the heavy expense of time and money, is a burning illustration thereof.

The reasons for absence of unanimity by the three aforesaid functionaries are more than apparant. The Chief Justice of the High court also does not easily agree for establishment of the Benches despite popular demand of the public at large and of elected representatives. It, hence, necessitates that some one should have the final say in the matter and that can alone be of the President under the Constitutional frame work.

Hence the Bill.

NEW DELHI;
May 8, 1998.

BHAGWAN SHANKAR RAWAT

Bill No. 53 of 1998

A Bill further to amend the Land Acquisition Act, 1894

BE it enacted by Parliament in the Forty-ninth Year of the Republic of India as follows:—

Short title and
commence-
ment.

1. (1) This act may be called the Land Acquisition (Amendment) Act, 1998.

(2) Sections 2 to 4 and 6 shall be deemed to have always been in force and section 5 shall be deemed to have been in force with effect from 24th day of September, 1984.

Substitution
of new section
for section 16.
Power to take
possession.

2. In the Land Acquisition Act, 1894 (hereinafter referred to as the principal Act), for section 16, the following section shall be substituted, namely:—

1 of 1984.

“16. (1) When the Collector has made an award under section 11, he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances:

Provided that any person, from whom any land is so acquired, may, after the expiration of a period of ten years from the date of such acquisition, apply to the State Government for restoration of that land to him on the ground that the land has not been utilised for the public

purpose for which it was acquired within the said period, and, if the State Government is satisfied to that effect, it shall order restoration of land to him on payment of charges which were incurred in connection with acquisition together with interest at the rate of fifteen per centum per annum and such developmental charges, if any, as may have been incurred after acquisition.

Explanation—In computing the period of ten years, the period during which the acquired land could not be utilised on account of injunctions or stay order of the Court shall be excluded.

- 16 of 1908. (2) Notwithstanding anything contained in Registration Act, 1908, the order of restoration of land passed by State Government under sub-section (1) shall not be liable to registration under that Act, and shall also be not liable to be charged with any stamp duty under the Stamp Act, 1899".
- 2 of 1899.

3. In section 17 of the principal Act, after sub-section (4), the following sub-section shall be added, namely:—

Amendment
of section 17.

"(5) The provision relating to restoration of land referred to in sub-section (1) of section 16 shall also apply in relation to acquisition of land made under the sub-sections (1) and (2)."

4. In section 18 of the principal Act,—

Amendment
of section 18.

(i) in sub-section (2), after the existing proviso, the following provisos shall be added, namely:—

"Provided further that the Collector may entertain the application after the expiry of any period referred to in clauses (a) and (b) of the first proviso if he is satisfied that the applicant was prevented by sufficient cause from making the application in time:

Provided also that if a reference has been made to the Court which thereupon finds that the application was not made in time, the Court may, if satisfied that the applicant was prevented by sufficient cause from making application in time, condone the delay."

(ii) after sub-section (2), the following sub-sections shall be added, namely:—

"(3) The Collector shall, within ninety days from the date of receipt of an application under sub-section (1), make a reference to the Court:

Provided that if the Collector does not make a reference to the Court within a period of ninety days from the date of receipt of the application, on an application by the applicant the Court may direct the Collector to make a reference within such time as the court may fix.

- (4) Any order made by the Collector on an application under this section shall be subject to revision by the Court, as if the Collector were a court subordinate to the High Court within the meaning of section 115 of the Code of Civil Procedure, 1908."
- 5 of 1908.

5. In section 28 of the Principal Act, the following explanation shall be added at the end, namely:—

Amendment
of section 28.

"Explanation—The expression 'compensation' as appearing in this section and also in section 34 shall include all the amounts payable under sub-sections (1A) and (2) of section 23."

6. In section 28A of the principal Act,—

Amendment
of section
28A.

(i) in sub-section (1), after the existing proviso, the following proviso shall be inserted, namely:—

"Provided also that the Collector may entertain the application after the expiration of the said period, if he is satisfied that the applicant was prevented by sufficient cause, from making an application in time."; and

(ii) after sub-section (3), the following explanation shall be added, namely:—

“Explanation.—For the purposes of this section, an award of the Court under this part means and includes the judgement of the High Court and of the Supreme Court and if the award of the reference Court, made under section 26, is disputed by an aggrieved person, and the limitation as prescribed in sub-section (1) shall be computed, accordingly, from the date of the judgement of the High Court or the Supreme Court, as the case may be.”.

Amendment
of section 50.

7. In section 50 of the principal Act,—

(i) in sub-section (2), after the existing proviso, the following proviso shall be added, namely:—

“Provided also that the knowledge of the local authority or company regarding the pendency of reference proceedings would be sufficient notice to such local authority or company.”.

(ii) after sub-section (2), the following sub-section shall be added, namely:—

“(3) Where the amount is payable by the Collector consequent to, the making of the award by the Court under part III or, the decree of the High Court or the Supreme Court on an appeal therefrom under section 54, the person interested may, at his option, recover the same from the local authority or the Company as if it were liable to pay such an amount.”.

STATEMENT OF OBJECTS AND REASONS

The power of Sovereign to take private properties for public use is based upon the doctrine of eminent domain. Consequently, the right of the owner to compensation for the deprivation of such a property is also well recognised. A justification of this exercise of the power is based on two Latin maxims: (i) *alms populo suprema est i.e.*, regard for the public welfare is the highest law and (ii) *necessity publica major est quam private i.e.*, public necessity is greater than private necessity.

One of the most important enactments for exercise of the right of eminent domain is the Land Acquisition Act, 1894, which was enacted more than a century back. However, with the passage of time and evolution of law, scores of deficiencies in the Act have surfaced. The Parliament and also the State Legislatures tried to remove them from time to time. The most appreciable endeavour in that regard is the Land Acquisition (Amendment) Act, 1984 (Act No. 68 of 1984), whereby several new provisions were inserted and certain existing provisions were modified.

The judicial pronouncements that have been recently given, while construing the provisions of the said Act and also the provisions enacted by the Act No. 68 of 1984, have highlighted several facets, which ordain amendments of the Act.

It has been often experienced that large scale acquisitions are being resorted to without there being immediate need of such lands and, therefore the provisions relating to the restoration of the acquired land to its ex-land owner would provide an effective check on such unhealthy tendency.

Further, there can hardly be any rational for not restoring it back to its ex-owner on payment of acquisition cost alongwith interest and development charges if the State fails to utilize the acquired land even after the expiry of ten years from the date of acquisition of such land.

Also, lack of an in-built provision in section 18 of the Act for condonation of delay is apparently harsh. *Bona fide* and inadvertent delays merit to be excused. Since there are inordinate delays on the part of the Collector in making references to the Court, the Bill proposes to lay down time limit of 90 days for the Collector to make reference on receipt of an application from the interested person and, if the time period of 90 days elapses, an applicant may apply to the Court for seeking directions against the Collector, commanding him to make a reference.

Till recently, there has been consistent judicial opinion that the amount of solatium, payable under section 23 of the Act, in consideration of compulsory acquisition is an integral part of compensation and is to fetch statutory interest under sections 28 and 34 of the Act. However, of late, the Court has taken a contrary view, according to which the amount of compensation means only the market value of the land. The proposed amendment to section 28 seeks to define the expression 'compensation' to include the amounts payable under various sub-sections of section 23 of the Act.

The proposed amendment to section 28A of the Act is to achieve the laudable purpose of empowering the Collector to entertain such applications which are not filed in time on account of *bona fide* reasons constituting sufficient cause. The proposed explanation to section 28A is intended to enlarge the connotation of the expression 'award of the Court' under Part III.

The Apex Court in its recently judgement has, *inter-alia* opined, that the right of a local authority or a company for whom land is being acquired has a right to be given adequate notice under section 50(2) of the Act. Since the Act does not postulate any particular form of

notice and, most often, it has been experienced that the local authority/company possesses complete knowledge and information about reference proceedings, it has been proposed that the knowledge of pendency of the reference proceedings would be construed as sufficient notice to such local authority/company. Further, under the law, as it stands now, an ex-land owner cannot recover the amount awarded by the reference Court/High Court directly from the local authority/company in the execution proceedings. At the same time, the Collector also does not satisfy the decree of the Court for want of funds from the concerned local authority/company. It has also been experienced that the amounts are recovered by attachment of properties belonging to the Collector. The Bill, therefore, seeks to empower the decree-holder to realise the awarded sum directly from the concerned local authority/company.

It cannot be gainsaid that review of any law in the light of judicial scrutiny is crucial to ensure *de facto* achievement of the legislative intent and purport. The various amendments proposed in the Bill are, therefore, urgently required and intended to give a fair deal to the farmers and others by removal of several anomalies and deficiencies of the Act.

Hence this Bill.

NEW DELHI;
May 8, 1998.

BHAGWAN SHANKAR RAWAT

FINANCIAL MEMORANDUM

Clause 5 of the Bill seeks to define the expression 'compensation' in order to include the amounts payable under sub-sections (1A) and (2) of section 23 of the Land Acquisition Act, 1894.

As regards the payment of compensation in connection with the lands acquired by the State Governments, the expenditure will be met out of the Consolidated Funds of respective State Governments. However, in case of payment of compensation for lands acquired by the Central Government, the expenditure will be met out of the Consolidated Fund of India. The Bill, therefore, if enacted, would involve expenditure out of the Consolidated Fund of India. At present, it is not possible to give the exact amount which will be incurred out of the Consolidated Fund of India to carry out the provisions of the Bill. However, a recurring expenditure of the amount of rupees 100 crore per annum is likely to be involved out of the Consolidated Fund of India.

A non-recurring expenditure of about rupees 100 crore is also likely to be involved.

S. GOPALAN,
Secretary-General.

